S.B. CIVIL WRIT PETITION NO.1522/2007.

Smt.Rekha Sharma
Vs.
State and ors.
Date of order : 10/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Hemant Sharma for the petitioner.

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Heard learned counsel for the petitioner.

By way of this writ petition, the petitioner has claimed a sum of Rs.10 lacs as compensation as due to the negligence of the Doctor in sterlization, an unwanted child has been borne to the petitioner.

During the course of arguments, learned counsel for the petitioner has cited the judgment of the Supreme Court in **Smt.Sampat Devi Vs. State of Rajasthan and ors. : 2007(2) WLC 155** and judgment of Punjab & Haryana High Court in **State of Punjab Vs. Shiv Ram and ors. : JT 2005(7) SC 606** and on the strength of these judgments, learned counsel for petitioner has argued that in case where sterlization operations conducted by the respondents fails, the respondents framed scheme for providing them insurance policy. In such circumstances, Punjab & Haryana High Court in State of Punjab, supra, has held that such a dispute cannot be examined by the High Court in exercise of its writ jurisdiction because everything would depend upon whether or not there was negligence. Proper remedy for such litigations therefore is to file a civil suit.

While not entertaining the writ petition, I set the petitioner at liberty to either apply for benefit of insurance policy under a scheme which has been introduced/framed by the respondents or file a civil suit in accordance with law.

With the above, the writ petition is disposed of.

(MOHAMMAD RAFIQ), J.

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